

PATERNITY ESTABLISHMENT

Case Initiation—Third-Party Obligee

CS 602.2

SUPERSEDES

CS 602.2, Case Initiation--Third-Party Obligee, February 2, 2000

REFERENCES

MCA §§ 40-5-231 through 40-5-237; 40-6-110 through 40-6-118, and 50-15-210

Policy

Applicability

The case initiation procedures in this section apply only when 1) the case meets the conditions for a paternity case given in section CS 602.1 Case Initiation--Mother Obligee, and 2) the obligee is not the natural mother of the child, but a third-party custodian. The third-party custodian (the obligee) may be either a custodial relative or a state agency providing foster care or adjudicated delinquent services. Guidance on processing third-party obligee contested cases is provided at the end of this policy section; specific procedures, except as noted, are the same as those in section 605.2 Notice of Parental Responsibility.

Processing Third-Party Obligee Cases

Generally, the specific procedures for initiating third-party obligee cases are the same as for mother-obligee cases. These procedures are given in section CS 602.1 and, unless otherwise specified, apply here as well. Likewise, the general policy statements in section CS 602.1 on multiple allegations, presumption, exclusion, period of conception, location, unknown allegations, jurisdiction, time frames, birth records, and pre-service contact of the alleged/presumed father also apply. The purpose of this section is to outline the special parameters for working with both the third-party obligee and when possible the natural mother to obtain information necessary to resolve paternity or establish reasonable cause for a paternity action.

Differences from Mother-Obligee Processing

There are six main differences between mother-obligee and third-party obligee case processing:

1. Incentives for natural mother's cooperation. Because the natural mother will not receive child support payments upon establishment of paternity and a support order, and is not currently receiving public assistance benefits related to the child that could be terminated, there may be little incentive for her to cooperate in providing essential information or in submitting to genetic testing; the CSED may need to subpoena the mother's cooperation in applicable situations.
2. Obtaining evidence of reasonable cause. Where reasonable cause is required to proceed with the case, and the CSED cannot obtain the natural mother's sworn statement (paternity affidavit) claiming the alleged/presumed father is the natural father, the CSED must investigate other possible sources for evidence of reasonable cause, see below.

Reasonable cause is required for the CSED to take any of the following actions:

- 1) Enter a Paternity Consent Order prior to service of notice.
- 2) Enter a Paternity Default Order prior to service of notice (for default on a Consent to Genetic Testing).
- 3) Issue a Notice of Parental Responsibility (NPR), and enter any subsequent orders based on the notice.

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IMPORTANT: The Paternity Consent Order in 1) the CSED will have reasonable cause based on the Admission of Paternity and Application for Paternity Consent Order even without a paternity affidavit, **but for the Paternity Default Order in 2), reasonable cause without a paternity affidavit cannot be assumed.**

3. Scheduling Genetic Testing. Because the child does not live with the natural mother, the caseworker must arrange with the obligee for the appearance of the child, and separately with the mother for her own appearance, at drawings for genetic testing.
4. Genetic Testing Without Mother's Tissue Sample. If the CSED cannot obtain the mother's tissue sample, it is still possible to proceed with genetic testing using only the child's and the alleged/presumed father's samples. With sufficient testing the CSED's contracted testing laboratory can arrive at a result where the alleged/presumed father is either excluded, or included with a high probability of paternity.
5. Disclosing Results of Genetic Testing. The CSED may not send copies of actual genetic testing results to the obligee, because of legal restrictions concerning confidentiality.
6. Interstate Referrals. In outgoing interstate cases where the CSED cannot obtain a paternity affidavit from the natural mother, it must proceed with the referral if there is other evidence of reasonable cause, and may generally proceed even without it.

Reasonable Cause Determinations

Montana statute gives only two examples of acceptable evidence of reasonable cause, the mother's sworn statement, and a presumption. However, the law includes "any other reasonable cause to believe that the alleged father is the child's natural father" as an acceptable basis for a paternity action. Reasonable cause is defined as the knowledge of facts, actual or apparent, which is strong enough to justify a reasonable or prudent person in a particular belief. Reasonable cause must be supported by sufficient underlying facts and circumstances for the trier of fact to determine the validity of the belief.

Reasonable cause to believe a man may be the natural father of the child **may** exist when the man voluntarily pays child support, visits with the child, tells others that the child is his, buys or pays for other necessities, or otherwise performs acts or makes statements consistent with what a natural father would do under the same circumstances. Consult the CSED staff attorney to determine if reasonable cause exists in the absence of a paternity affidavit or presumption.

Differences from Mother-Obligee & Contested Cases Processing

If case initiation procedures do not resolve paternity and there is reasonable cause to proceed with the contested case in a third-party obligee situation, the procedures in section CS 605.2 will apply, except as follows:

- 1) Genetic testing. The special genetic testing procedures described in this section will apply to third-party obligee contested cases as well.
- 2) Status of the obligee in the case. In third-party obligee contested cases the CSED is required to send a copy of the Notice and Order for Genetic Testing Hearing to the obligee, but not to the mother; neither the obligee nor the mother is a party to the hearing; the CSED does not provide copies of the hearing exhibits or the hearing checklist

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to the obligee or the mother, unless that person will be testifying as a witness at the hearing, and needs a particular document in relation to the testimony; only the mother or the father (not the obligee) may request a change in the child's birth certificate upon entry of a CSED paternity order; both the mother and the obligee may request an order of nonpaternity if applicable; and the CSED will not require financial information from the obligee, upon combined service of the NPR-NOCS on the alleged/presumed father.

Procedures

Caseworker

1. **Case Set Up.** Upon receiving a case, and whenever new allegations are added or the status of any alleged/presumed father changes, updates records and takes actions as in CS 602.1 Case Initiation--Mother Obligee, including sending the CS601.3A Paternity Claim Notification Letter, when appropriate, if CSSD receives a written claim of paternity from the child's mother as per [MCA 40-5-232\(6\)](#). Enters information on the SEARCHS CAP, CHL, PAR, PAN, and API screens, enters SEARCHS case notes.
2. **Non-Montana Births.** If the child was born outside Montana or to a Native American mother or alleged/presumed father, follows the procedures in CS 602.1 for obtaining paternity information from the other state or determining Native American jurisdiction; proceeds to step 3.
3. **Case Initiation.** Obtains information and initiates contacts concurrently as follows:
 - a. Checks SEARCHS for an open case against the mother; if found, identifies any information useful in obtaining the mother's Paternity Affidavit as in step 7, or her participation in genetic testing step 11a Cooperation of the Mother.
 - b. Obtains birth record information as in section 602.1.
 - c. Contacts the obligee or in foster care or adjudicated delinquent cases, the social worker or probation officer, and schedules a paternity interview for a date following the expected receipt of the information in 3b. In special cases (see CS 602.1) contacts the Office of Public Assistance (OPA) for assistance in obtaining information from the obligee or other sources.
 - d. Prepares and sends the father's paternity packet as in section 602.1.

CSED Paternity Registry at the Office of Fair Hearings (OFH)

4. Birth Records Search Processes the Request for Birth Records as in section 602.1.

Caseworker

5. **Paternity Interview.** Conducts a paternity interview with the obligee--by telephone or in person-- according to the procedures in CS 602.4 Paternity Interview Outline; especially notes information that may help establish reasonable cause. Also, if applicable and in conjunction with the interview, asks the obligee to complete and return form CS 408-3C, Long Arm Jurisdiction Questionnaire. NOTE: The caseworker may ask the obligee, the mother (step 7), or both to furnish jurisdiction information using the Questionnaire.

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If the paternity interview with the obligee or other information now in the case file provides a presumption, in a single-allegation case, proceeds directly to establishment of a support order (a Paternity Affidavit is not required). END OF PATERNITY PROCESS In a multiple-allegation case updates SEARCHS accordingly and proceeds to the next step.

6. Non-Cooperation. If the obligee does not cooperate with the interview requirements (fails to attend, reschedule, or refuses to provide known information, in a public assistance case notifies the assistance agency the obligee has not cooperated. If the obligee continues to not cooperate, and the public assistance referral remains open or the referral closes but, there is reason to complete the paternity establishment before closing the child support case, consults with the CSED legal staff and follows the procedures in CS 405.12 Investigative Subpoena for a subpoena to compel the obligee's cooperation. In a non-public assistance case begins case closure procedures.

7. Obtaining the Mother's Paternity Affidavit. If the paternity interview with the obligee indicates the mother may be willing to complete a Paternity Affidavit, prepares and sends (directly or through the obligee) the mother's paternity packet containing form CS 602-1A Letter to Mother, form CS 602-1C Paternity Affidavit, form CS 408-3C Long Arm Jurisdiction Questionnaire, if applicable.

Monitors for return of the Paternity Affidavit; if the Affidavit is not timely returned proceeds with an investigative subpoena as in step 8.

8. Investigative Subpoena. If the paternity interview with the obligee indicates the mother will not cooperate in completing a Paternity Affidavit, follows the procedures in CS 405.12, to compel the mother to provide the information called for in the Affidavit. If a subpoena is not possible (the mother is dead or is not located), proceeds to step 9.

9. Processing the Returned Affidavit. Reviews the returned Affidavit for completeness and proceeds as in section 602.1 to obtain additional information from the mother if necessary. If the mother refuses to provide the required additional information, including the names of other possible fathers if the original returned Affidavit has ruled out the alleged father in a single-allegation case, consults with the CSED legal staff concerning the feasibility of obtaining an investigative subpoena.

If necessary, contacts again the obligee for additional information, or if the returned affidavit provides a presumption, proceeds as in step 5.

10. Admission. If the alleged/presumed father returns a signed admission of paternity and Application for Paternity Consent Order (single-allegation cases only), proceeds as in section CS 602.1.

11. Genetic Testing. If the alleged/presumed father returns a signed Consent to Genetic Testing, or contacts the CSED and discusses or agrees to voluntary genetic testing, proceeds as in section CS 602.1 except as follows for any that apply:

- a. Cooperation of the Mother. If the alleged/presumed father agrees to genetic testing, attempts to schedule a drawing appointment for the mother. If the mother is located but is not willing to cooperate, consults the CSED staff attorney and obtains a Genetic Testing Subpoena to compel her participation as in CS 605.2 Notice of Parental Responsibility.

- i. If the mother participates voluntarily or in response to a subpoena, schedules **separate** drawing appointments for the alleged/presumed father, the mother, and through the obligee the child.

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- ii. If the mother does not participate (she is dead, not located, or otherwise not accessible by subpoena), informs the CSED's contracted testing laboratory that the case will be a two-sample case instead of a three-sample case. (Special testing procedures are required in two-sample cases.)

NOTE:

Use of Alternative Sample. In special situations it may be possible to proceed using a tissue sample from a relative of the mother, or to obtain a tissue sample after the mother is deceased. Supervisor assistance or approval may be required.

- b. **Default of the Alleged/Presumed Father.** If the alleged/presumed father returns a signed Consent to Genetic Testing but then fails to appear for the scheduled drawing (single-allegation cases only), determines whether there is reasonable cause to believe the man may be the natural father of the child.
 - i. If so, follows the procedures in section CS 606.1 Paternity Default Order, and provides evidence of the reasonable cause in the application package to the OFH.
 - ii. If not, proceeds to step 12.
- c. **Positive Results.** Upon receipt of positive genetic testing results, sends a letter to the obligee explaining the consequences of the positive results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the mother for her information.
- d. **Negative Results.** Upon receipt of negative genetic testing results, sends a letter to the obligee explaining the consequences of the negative results; does not send a copy of the actual results of genetic testing to the obligee. Sends a copy of the genetic testing results to the mother for her information. In single-allegation cases also includes in the letter to the mother, the obligee, or both, a request for assistance in identifying other allegations.
- e. **Order of Nonpaternity.** If requested by the mother, the obligee, the excluded man, or another state, prepares and sends to the OFH form CS 604-1A Order of Nonpaternity, as in CS 602.1.

IF PATERNITY IS NOT RESOLVED AT THIS POINT, AND THE ALLEGED/PRESUMED FATHER HAS NOT AGREED TO TESTING, PROCEEDS TO STEP 12.

- 12. **Jurisdiction for a Contested Case.** Following procedures in CS 602.1, determines whether the CSED has or can obtain jurisdiction to proceed with a contested case. If so, proceeds to step 13. If not, refers the case to the other state, or sends a Waiver of Jurisdiction, or both, as in CS 602.1.
- 13. **Reasonable Cause for a Contested Case.** Determines whether there is reasonable cause to believe the alleged/presumed father is the child's natural father, based on the paternity interview, the returned Paternity Affidavit, or any other facts of the case known at this time. See Reasonable Cause Determinations above for guidance in cases where the Paternity Affidavit is not available.

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- a. If reasonable cause exists, proceeds to section CS 605.2 and follows the procedures for establishing paternity in a contested case. If genetic testing applies, also follows the procedures in step 11a, this section.
- b. If reasonable cause cannot be shown for this man, continues to monitor or search for information leading to reasonable cause for him, and proceeds (or continues) with other allegations in the case as in 602.1. For any allegation, in a non-public assistance case, initiates case closure procedures. In a public assistance case, allows the case to remain open, pending receipt of new information; periodically contacts the obligee regarding any information that may lead to reasonable cause.